IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1216 OF 2004
IN
INCOME TAX APPEAL (L) NO.11 OF 2004

The Commissioner of Income Tax
City VI .. Appellant
V/s
M/s.Grasim Industries Ltd. .. Respondent

Mr.A.D.Kango for the Appellant.
Mr.J.D.Mistry with Mr.A.K.Jasani for the Respondent.

CORAM : DR.S.RADHAKRISHNAN, &
V.C.DAGA, JJ.

DATE : 12th June, 2007.

P.C.:

1. Heard the learned Counsel for the parties. By the aforesaid Notice of Motion, the Appellant is seeking condonation of 634 days delay in filing the Appeal. The original affidavit in support of the Notice of Motion is extremely criptic and devoid of any particulars. The said affidavit states that the delay occurred due to the restructuring of the Department and due to delay in locating the files. The learned Counsel for the Appellant however fairly conceded that the restructuring took place in the year 2001 and not in 2004.

2. After noticing the aforesaid patently false statement, we had permitted the Appellant to file an additional better affidavit explaining the delay in a proper manner. The Appellant has accordingly filed further affidavit dated 11th April, 2007 seeking to explain the aforesaid delay. Perusal of the same

indicate that it took almost six months time for the Income Tax Department to approve & send the file for drafting the Memo of Appeal after receipt of the order of the ITAT. The folder was sent for drafting the Memo of Appeal to the Ministry of Law on 22.7.2002 and the draft Memo of Appeal was received by the Assessing Officer on 22.12.2003 i.e.almot after a period of 17 months. Even after the draft was received on 22.12.2003 the affidavit further states that the stamp papers for the purpose of filing the Appeal were received on 11.3.2004, i.e.after the lapse of two & half months. Even after receiving the stamp papers on 11.3.2004 the Appeal was lodged on 15.4.2004, i.e. more than a month thereafter. The last date of filing the Appeal was 21.7.2002 whereas the Appeal was lodged on 15.4.2004.

3. The Assessing Officer ought to have pursued with the Ministry of Law, and got the appeal drafted & lodged within time. The facts disclosed in the affidavit disclose a very sorry state of affairs. We are not inclined to condone the aforesaid gross delay. Notice of Motion stands dismissed.

(V.C.DAGA, J.) **(DR.S.RADHAKRISHNAN,J.)**